ASIA

ETHNICITY AND NATIONALITY

INTRODUCTION

"Death to the Tamils" shouted a group of Sri Lankan soldiers, some drunk, as they entered Kumarapuram, Trincomalee district, on 11 February 1996. Villagers cowered in their houses, desperately hoping that they would not be seen. The soldiers broke open shutters and began firing at the people hiding inside. A woman who survived begged them to spare her family. Her pleas were ignored: seven people were shot dead in her house, including a six-year-old child. In other houses, six more children and 18 adults were killed. One young woman, 17-year-old Arumaithurai Tharmaletchumi, was dragged from a shop in the village and raped before being shot. In terror, many of the survivors fled their village to seek sanctuary elsewhere.

Through no fault of their own, millions of people have been driven from their homes in Asian countries by conflicts and persecution. Most have escaped an immediate danger of human rights abuses, such as arbitrary arrest and torture, or the threat of political killings or "disappearances". Some have fled generalized violence. Many have been targeted simply because of their ethnic origin. Around half have sought sanctuary abroad as refugees. The rest have been either unable or unwilling to cross an international border and are displaced within their own country.

Today, Asia shelters around 1.8 million refugees.[2] The overwhelming majority have fled from other countries in the region — most by road, some by boat, a few by air. A further 1.7 million people are internally displaced.[3]

The international system that is supposed to protect them is under intense pressure and is failing some of those most in need. The richer nations of the West are making it increasingly difficult for refugees to cross into their territories and seek asylum, particularly those refugees from the world's poorest and most troubled countries. New visa requirements, fines on airlines and shipping companies for transporting people without travel documents or visas, interdiction on the high seas and pre-flight screening of passengers are just some examples of restrictive measures imposed by such nations. Some Western governments have also begun to impose a restrictive interpretation of who qualifies for protection as a refugee in order to discourage people from seeking asylum in their countries.

This trend can be seen within Asia as well, as the more affluent countries such as Australia and Japan adopt measures which have the effect (and sometimes even the intent) of obstructing asylum-seekers from gaining access to their frontiers and seeking protection. As a result, refugees have no choice but to flee to neighbouring countries which often suffer from the same economic, political or social difficulties as their countries of origin.

Many states in Asia have acted as host to large numbers of refugees — even if they often have lacked the means to provide much support. However, in recent years refugees have been finding it increasingly difficult to gain safety and protection even in these Asian countries of asylum. Some are being turned away. Some are being dumped in poverty-stricken camps that are vulnerable to attack. And some are being forced to return home before it is safe to do so. The world has agreed that certain people should be offered international protection in all circumstances. The 1951 UN Convention relating to the Status of Refugees (the UN Refugee Convention) defines a refugee as anyone who:

> *"...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country..."*

This report focuses on refugee flows connected with human rights abuses suffered by people because of their ethnic or national identity. When governments or armed opposition groups target people for their ethnicity, everyone in the targeted community is threatened — and there is little they can do to protect themselves. Their very identity, often irrespective of their particular political views or activities, is the reason that their lives are at risk.

They have no choice but flight.

This report demonstrates that people usually only make the difficult decision to leave their homes under the most extreme circumstances — when they have been victims of human rights violations or are sure they will soon become victims. It also looks at what happens to refugees when they do flee and how issues of ethnicity and identity can affect their treatment.

Four countries are highlighted. Myanmar's many ethnic minorities have been persistently targeted by the military for gross human rights violations as the government tries to assert its political control and force the pace of development throughout the country. As a result, hundreds of thousands of Burmese people have been forced to flee abroad. Many have been forcibly returned home or continue to face risks in the country of asylum.

In Sri Lanka, internal conflict centred on the Sinhala-Tamil divide has involved widespread human rights abuses by all sides. Hundreds of thousands of people have abandoned their homes to escape the terror, the overwhelming majority of them Tamils. Most are internally displaced on the island, although there is a large Tamil refugee community in India and many Sri Lankans have sought safety further afield.

Around 90,000 Bhutanese people, all members of one ethnic group, have been forced to leave their country as a result of human rights violations and a policy of denying them citizenship. Most are living in refugee camps in Nepal, still waiting for news about whether they will ever be allowed to return home in safety.

East Timorese people face a double jeopardy in connection with their national identity. At home, Indonesian forces have used repression and intimidation for more than 20 years in an attempt to stamp out assertions of East Timorese identity and to combat an East Timorese independence movement. Some of those who manage to escape are being denied refugee status on the grounds that they have a claim to Portuguese citizenship because of East Timor's colonial links to Portugal.

Conflicts and repression connected with ethnic and national divisions are behind the flight and plight of many other refugees in the region. Decades of systematic repression by the Chinese authorities of Tibetan national, religious and cultural identity has generated a refugee diaspora reaching from India to Europe. At least 10,000 Irian Jayans have over time fled to Papua New Guinea to escape fighting between the Indonesian military and those seeking independence for Irian Jaya (formerly Dutch New Guinea). Some 3,000 Bougainvilleans targeted in another secessionist conflict in Papua New Guinea's eastern-most province have at times sought refuge in neighbouring Solomon Islands: a further 67,000 are internally displaced.

In addition, restrictive or arbitrarily applied nationality laws have been used to disenfranchise and marginalize ethnic minorities. Tens of thousands of ethnic Nepalese in Bhutan have been arbitrarily deprived of their nationality and forcibly exiled from their homeland. In Myanmar too, restrictive nationality laws have been used to prevent ethnic minorities from exercising their freedom of movement, and to brand entire populations as "illegal immigrants". In Hong Kong, there are still hundreds of ethnic Chinese asylum-seekers from Viet Nam: they have been "screened out" under the Comprehensive Plan of Action for Indochinese refugees (see below) but the Vietnamese Government has refused to recognize their citizenship and is not allowing them to return to their country.[4]

Few refugees in the region will be able to return home until the underlying human rights issues that drove them into exile are addressed and resolved. Such is the urgent task confronting governments and opposition groups across Asia. In the meantime the international community must ensure that all those fleeing for their lives are offered the protection which they deserve.

Causes of flight

The map of Asia offers some clues to the factors behind the region's refugee problems. Many of the lines were drawn arbitrarily by colonial powers irrespective of the ethnic groups they enclosed or divided. Others have been drawn and redrawn through conflicts — some fought or encouraged by outside powers, others the result of internal political and economic inequalities between different ethnic groups. Invariably these conflicts have involved widespread human rights violations, often targeted at particular ethnic minorities. Civilians have been the main casualties and many have been forced to flee for their lives.

Several of the worst refugee crises have been the result of superpower rivalries in the region. The wars in South East Asia created some of the region's largest refugee movements, involving people from Viet Nam, Laos and Cambodia. According to the UN High Commissioner for Refugees (UNHCR), the international agency charged with ensuring that both the protection and relief needs of refugees are met, there were still around 140,000 Indochinese refugees in 1992. Most were in Thailand, Malaysia, Indonesia, the Philippines, Macao and Hong Kong. Others had landed on the coasts of Japan and Australia, while

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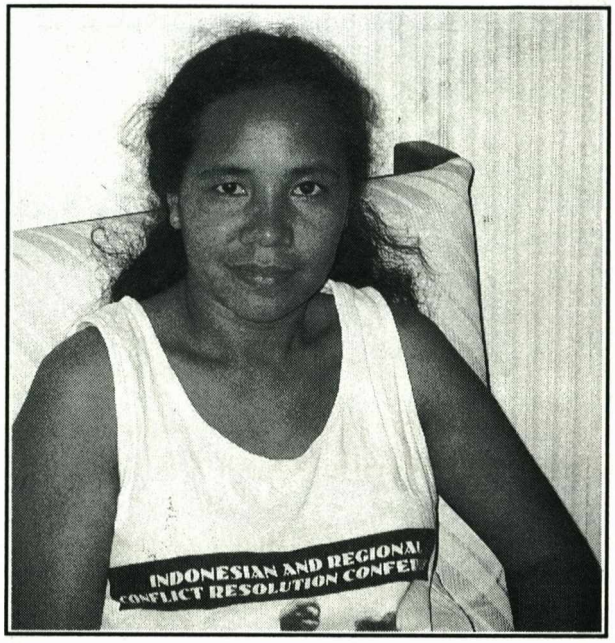
Men and women ran screaming from the cemetery. As bullets flew through the air, bodies slumped to the ground. They were dragged to safety by their relatives and friends, although for some it was already too late. Soldiers chased the fleeing crowds, hitting out at random with batons. Unusually, the scene was captured on film by a lone, brave cameraman, and his pictures opened the eyes of the world to the terror in East Timor. By the end of that terrible day, 12 November 1991, at least 100 East Timorese people, possibly as many as 270, had been massacred by Indonesian troops during a peaceful protest at the Santa Cruz cemetery in Dili, East Timor. Hundreds more were injured.

Alu is still haunted by her memories of the day. She was near the entrance of the cemetery when police arrived. They immediately attacked her with batons. As she ran she heard the police firing their guns. People fell to the ground around her as they were shot. Some of her friends and her cousin were among the casualties. Miraculously no bullet hit her.

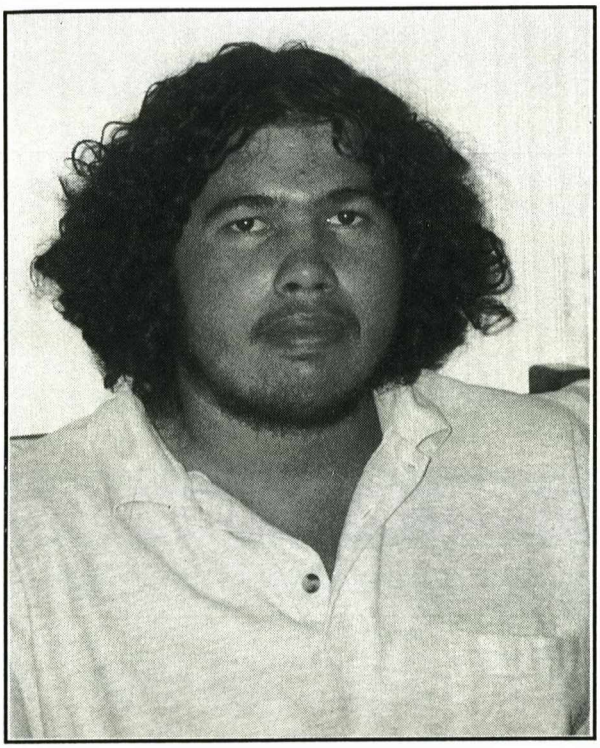
In the following years she was threatened by the military, witnessed assaults on other East Timorese, and lived in constant fear that the police would find out that she had been at the Santa Cruz cemetery that fateful November day. In the end, the strain was too much and she escaped to Australia.

People have been fleeing East Timor since Indonesia invaded the territory in December 1975. Since then some 200,000 East Timorese have been killed or died of starvation, and to this day human rights violations remain endemic.[34]

East Timor was ruled continuously by Portugal from 1702 until August 1975 when, during a period of turmoil at home, the Portuguese authorities evacuated the island. The previous year East Timor had begun a process of decolonization following the overthrow of the dictatorship in Portugal. The transition to independence was abruptly interrupted by the Indonesian invasion: the Indonesian authorities claimed that East Timor had been incorporated as its 27th province by an "act of integration". This annexation has never been recognized by the UN, which defines East Timor as a "non-self-governing" territory. However, many member states of the UN have been reluctant to take a strong stand on Indonesia's occupation of the island or the grave human rights abuses taking place in the territory, despite several critical resolutions and consensus statements by the Commission on Human Rights. For these countries,



Alu



Antonio Goivera

protecting economic and strategic interests seem to be more important than upholding their commitments towards human rights.

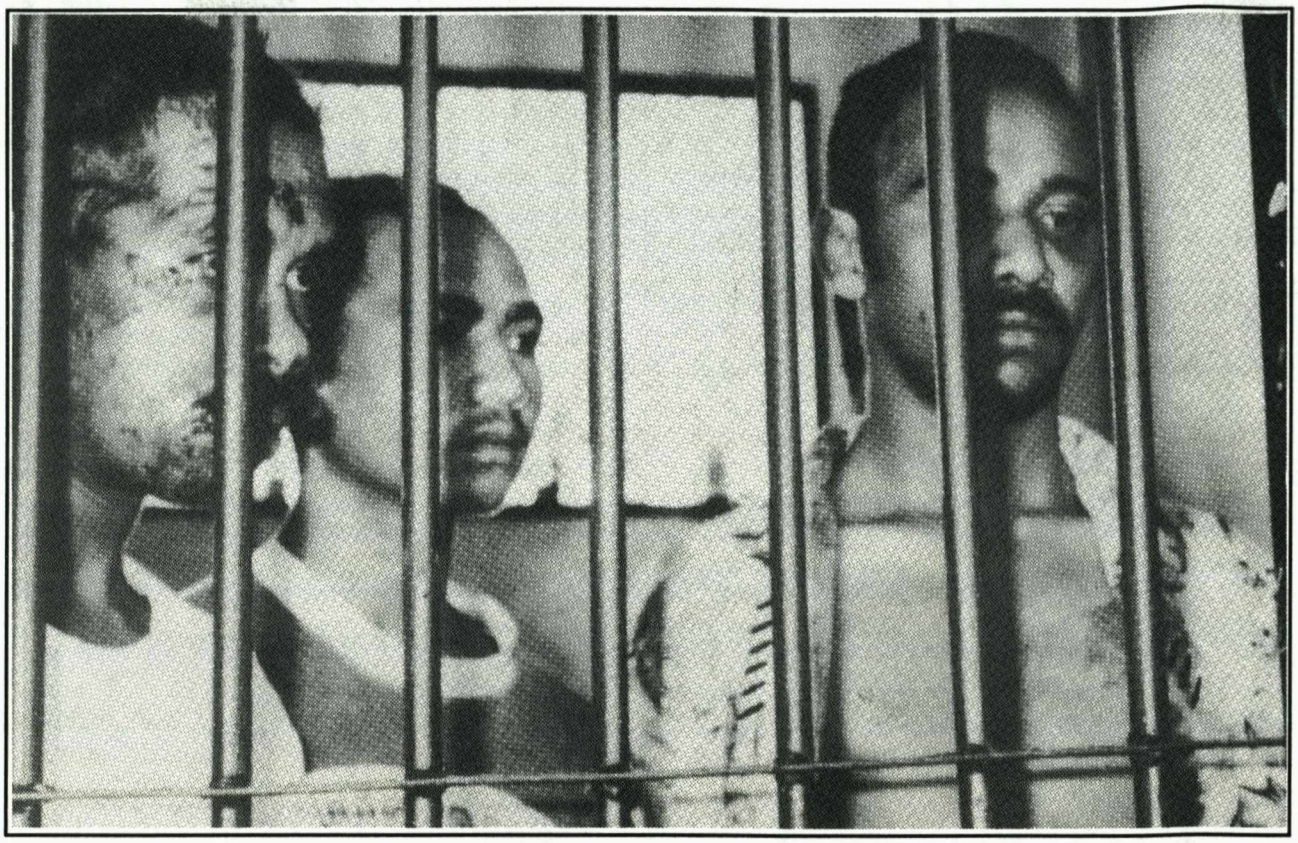
Opposition to the occupation remains strong in East Timor and, despite 22 years of Indonesian domination, there is still a vocal movement for self-determination. Every day people suffer human rights violations simply for asserting their identity as East Timorese, however trivial their display of national identity might be. In March 1997, for example, 17 youths were arrested during a pro-independence demonstration at a hotel in Dili during a visit to the territory by the UN Secretary General's Personal Representative on East Timor. They were charged with publicly "expressing hatred" towards the government and face imprisonment for up to seven years.

Those suspected of membership of the independence movement, whether or not they support violent activities, are dealt with even more harshly by the Indonesian authorities. They are tortured, ill-treated, killed, made to "disappear" or detained as prisoners of conscience. Women in particular are at risk of rape or sexual assault, especially those whose family members are suspected opposition activists. Since late May 1997, dozens of people have been taken into custody and are awaiting trial, after a series of attacks by the armed opposition in East Timor on both civilian and military targets.

Many East Timorese who seek asylum are survivors of torture or trauma. One such victim, 25-year-old Antonio Goivera, was arrested in August 1992 in Dili and taken into military custody. Soldiers hit and kicked him while questioning him about alleged clandestine activities on behalf of the East Timorese independence movement. He was then tortured with electric shocks and beaten with a piece of wood, injuring one of his ribs. He was held for two months in various places before being taken to a military detention facility in Baucau. Again he was tortured. He was eventually released in October 1993, but had to report every week to the *Satuan Tugas Intelijen*, a military intelligence unit.

A year later, in November 1994, Antonio Goivera was rearrested and tortured once again. At one point soldiers blindfolded him, put him in a car, and drove him to an unknown destination. When the car stopped they said they were going to kill him unless he provided the information they wanted. Later they repeated the threat with a gun in his mouth. After eight days of this ordeal he was released. Soon after, in 1995, he fled to Australia, where he is now seeking asylum.

The repression has forced thousands of East Timorese to flee their country since 1975. They have sought protection in many countries,



East Timorese youths in detention awaiting trial for their role in a demonstration on 23 March 1997 outside the Mahkota Hotel in Dili. The demonstrators hoped to bring their concerns about Indonesia's occupation of East Timor to the attention of the UN Personal Representative of the Secretary General on East Timor, who was staying at the hotel. The protest began peacefully, but ended in scuffles with the security forces, who used violence to disperse the crowd. Dozens of youths were injured and dozens of people were arrested.

including Australia, Maucau and Portugal. Increasingly, however, they are being met by less than warm receptions by states that do not wish to offend Indonesia, a powerful and strategically important ally — despite the fact that the granting of asylum is recognized by the international community as a purely humanitarian act.

No easy escape

Estavão* waited until dark and then scaled the walls of the French Embassy in Jakarta. This daring venture was, he believed, his only hope of finding safety.

Three and a half years earlier, in June 1993, he had been arrested for supporting an armed East Timorese opposition group. He was repeatedly tortured, including by being locked into an old tin drum full of ice and water. He was also beaten and kicked. After his release several weeks later, he lived in hiding although he remained politically active. When his family began to be harassed by the Indonesian security forces, he decided he should leave the country. So in January 1997 he went by ship from East Timor to Jakarta and broke into the French Embassy to seek asylum. He now lives in Portugal.

Most East Timorese do not want to abandon their homeland. But even when they make the painful decision to do so, their journey to safety is fraught with dangers and difficulties.

The Indonesian Government publicly states that East Timorese are free to leave the country. However, to do so legally, they must have a passport and a visa to travel to another country — and for most East Timorese such a requirement is in practice extremely difficult to fulfil. Those who have a claim to Portuguese nationality cannot obtain a Portuguese passport from inside the country as Portugal does not have any consular or diplomatic offices in Indonesia or East Timor. Obtaining an Indonesian passport is also difficult, particularly for those perceived as political activists, and often involves payments of bribes. Even when East Timorese do manage to get a passport, many countries are extremely cautious

*A pseudonym

about granting them visas, fearing that they may seek asylum on arrival.

Such problems have driven East Timorese to attempt dramatic and risky escapes. Since September 1993, more than 100 East Timorese have sought asylum after climbing the walls of foreign embassies in Jakarta. Attempts have been made at the Australian, British, Dutch, French, German, Polish, Japanese, and US embassies. When asylum has been requested, the government concerned has usually negotiated with the assistance of the International Committee of the Red Cross (ICRC) the departure of the asylum-seekers to Portugal, which has agreed to accept the refugees.

In several cases, embassies have refused to hear the request for asylum. They have then expelled the asylum-seekers, some of whom have subsequently suffered human rights violations. In April 1996, eight East Timorese entered the German Embassy in Jakarta at 2am. Within minutes they were forced out by embassy security guards and handed over to Indonesian security forces waiting outside. A foreign media crew happened to be there and filmed the East Timorese being beaten and kicked by the soldiers. One of the asylum-seekers suffered a broken leg. All eight were taken into military custody for a day, transferred to police custody for a further day and then taken again into military custody before finally being released without charge. Three needed hospital treatment after their release. The German Government condemned the treatment of the eight and called for the Indonesian Government to investigate the ill-treatment, but it is believed that no inquiry was held. The eight East Timorese eventually left Indonesia for Portugal with the assistance of the ICRC.

A smaller number of East Timorese have made desperate attempts to flee East Timor by boat to Australia, a hazardous journey across an unpredictable ocean forced upon them by the reluctance of governments to grant them visas. Of the three known attempts in recent years, only one was successful. The other two ended up with the asylum-seekers being detained for hijacking and subjected to unfair trials.

In the first of the two cases, a group of up to 29 East Timorese asylum-seekers were arrested on 20 November 1995 as they attempted to travel to Australia by boat. The group, which included four children, was alleged by the authorities to have forced the boat's captain to change course and head for Australia. Most of the women and children were released shortly after the original arrests. Five of the group, however, were tried, convicted and sentenced to imprisonment for unlawfully taking control of a boat from its captain. Maria Fatima Pereira, 38, received a one-year sentence; Januario, 23, Carvalho Casto, 31, Raimundo De Jesus, 22, and Jaimundo de Carvalho, 20, all received nine-month sentences. During pre-trial detention, none had access to independent legal counsel, prejudicing their right to a fair trial.

A similar fate met 23 other East Timorese who attempted to flee East Timor by boat in January 1996. They were arrested and accused by the authorities of having rented a boat and then demanding to be taken to Australia. Even though they were supposed to have hijacked the boat, the group reportedly fell asleep, allowing the captain to change course and return to East Timor. Four of the group were reportedly still held in Baucau in July 1996 accused of trying to kidnap the boat owner and his son. They are now believed to have been released.

Australia's closing doors

The question of nationality for East Timorese follows them abroad when they seek asylum, whether they like it or not. This is particularly the case in Australia, a natural destination for many East Timorese as it is relatively close and is already home to a large East Timorese community. Over the past few years, Australia has made a major political investment in its relationship with Indonesia. Concern for human rights has virtually dropped from the bilateral agenda in the interests of new trade and security ties. Australia is the only country to recognize Indonesia as having sovereignty over East Timor and, despite having repeatedly asserted the right of the East Timorese people to self-determination, has negotiated with Indonesia to exploit oil resources in the Timor Sea in the face of unsuccessful legal challenges by Portugal.

Before 1992 Australia determined asylum claims by East Timorese on a case-by-case basis and many applications were granted. However, current government policy is that East Timorese are not eligible for Australian protection on the grounds that they have Portuguese citizenship. It appears that Australia's current position on East Timorese asylum-seekers reflects a broader pattern of increasingly restrictive interpretation of Australia's obligations to refugees in need of protection (see **Introduction**), and a reluctance by Australia to condemn human rights violations in Indonesia and East Timor.

The new government policy was the subject of a recent court challenge by an East Timorese man whose asylum application was rejected solely on the grounds that he was a Portuguese citizen. While the case was being decided, Australia's

Department of Immigration made no decisions on other East Timorese asylum applications.

Despite Australia's unique recognition of Indonesian sovereignty over East Timor, the government's argument in the recent court challenge was that this recognition does not contradict its position that East Timorese, whom it recognizes are Indonesian citizens, are also eligible for Portuguese citizenship under Portuguese law.

Claiming Portuguese citizenship is far from a straightforward procedure, nor is the outcome guaranteed. According to Portuguese citizenship law, East Timorese must prove that their parents were Portuguese citizens and that they themselves were born in East Timor in order to claim citizenship. In order to do this, they must obtain their own and their parents' birth records. Further complicating the process is the fact that Portugal does not recognize Indonesian civil registration certificates — a baptism certificate from a recognized church must be produced. This is difficult in a territory that has experienced over two decades of war and whose administration is now controlled by Jakarta. In any case, most asylum-seekers are not able to flee their homes with such detailed and precise documentation, a fact recognized by international standards. It is believed that without this documentation, the asylum-seeker would have to undergo a lengthy procedure to establish details about birth, through a declaration supported by testimonial evidence of witnesses. Amnesty International is unaware of any East Timorese asylum-seeker who has applied for Portuguese citizenship in Australia. However, the organization fears that this procedure could prove to be extremely slow and complicated. The Australian authorities have not yet clarified what would happen to asylum-seekers if they are unable to obtain Portuguese citizenship, nor is it clear to Amnesty International how the Portuguese authorities intend to apply the provisions of their citizenship law. It is also not clear whether the Portuguese authorities are willing to accept East Timorese who have been deported from Australia.

In May 1997 the full bench of the Australian Federal Court found unanimously in favour of the East Timorese asylum-seeker challenging the government policy. The court ruled that if an asylum-seeker had more than one nationality, a decision had to be made about the "effectiveness" of the protection available from the second nationality. It specifically raised issues such as whether it was possible for the asylum-seeker to present the necessary documents in Australia to obtain Portuguese citizenship, and whether the applicant would be allowed to enter Portugal. The court ruled that the asylum-seeker's case should be returned to Australia's Refugee Review Tribunal for a decision. The result of this decision is that for each East Timorese asylum-seeker, Australia's refugee determination process must consider whether Portuguese citizenship is actually "effective". Soon after the court decision, the Refugee Review Tribunal recognized three East Timorese asylum-seekers as refugees, recognizing that their Portuguese citizenship was not effective. The government has appealed all three cases to the Federal Court.

Despite the successful legal challenge the battle is not over. Unless the court rules on the general question of effectiveness of Portuguese protection for East Timorese, each East Timorese asylum-seeker will now have to show not just that they would risk persecution if forcibly returned to Indonesia or East Timor, but also that any claim to Portuguese citizenship would not offer effective protection in their case. It is anticipated that this could considerably lengthen the asylum application process.

Amnesty International recognises the general principle that asylum-seekers with more than one nationality may first be called upon to seek protection from one of their countries of nationality. However, given the difficulties described above, it is questionable whether Australia's insistence on this principle in the case of East Timorese complies with the humanitarian spirit of the UN Refugee Convention. The Australian Government's refusal to provide any kind of durable protection to East Timorese pending completion of this lengthy process could have a serious impact on many asylum-seekers who are victims of gross human rights abuses. A recent study of a group of East Timorese asylum-seekers in Australia by a specialist torture and trauma counselling unit found that a high proportion of them had suffered physical assault and torture,[35] and as a result of these experiences suffered clinical depression and other psychological distress. The survey concluded that the psychological condition of the group would be threatened by the prolonged period of uncertainty, and that "the additional imposition of trauma, such as forced removal from their country of haven (Australia)" would result in marked psychological deterioration and increased rates of suicide.

Nationality is a concept much more far reaching than the mere admittance of people to a certain territory (in this case Portugal). Countries have the right, indeed, the duty to strive to ensure that their nationals' human rights are protected — abroad as well as within their own country. Australia claims that East Timorese are Portuguese nationals, but it is clear that in the present situation Portugal is unable in practice to ensure that the human rights

of East Timorese are protected in East Timor. For all practical purposes, Portuguese citizenship is a fiction for East Timorese in East Timor. They are unable to apply for Portuguese citizenship in that territory, and are unable to request protection from the Portuguese Government. Indeed, the Australian Government has argued before the International Court of Justice that as Portugal no longer has sovereignty over East Timor, it has no standing to represent the interests of the East Timorese people. Given this position, it is difficult to see how the Australian Government's policies can be viewed as anything but a cynical shirking of Australia's responsibilities towards those fleeing serious human rights abuses.

More than 7,000 Australians have responded to what they see as a gross injustice being suffered by East Timorese asylum-seekers. They have joined a "sanctuary network" of volunteers willing to break Australian law by hiding 1,360 East Timorese refugees who may be refused asylum in Australia on the grounds that they are Portuguese citizens. In the face of increasing xenophobic opposition to immigration, they are among the many Australians who believe the country should continue to fulfil its international obligations towards people fleeing human rights violations in Indonesia, instead of trying to pass that responsibility on to others.

The ultimate solution to the problem of East Timorese asylum-seekers is for the international community, including Australia, to place more concerted and consistent pressure on the Indonesian Government to take concrete and effective steps to address the human rights problems which cause East Timorese to flee. Human rights are a critical ingredient to any long-term political solution to the East Timor issue.